

No. 415 CUTTACK, FRIDAY, MARCH 4, 2005 / FALGUNA 13, 1926

NOTIFICATION

No. 11268–II/1(B)-274/1994-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th October 2004 in Industrial Disputes Case No. 275 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Horticulturist, Bhubaneswar and its workman Shri Narendra Kumar Nayak was referred for adjudication is hereby published as in the Schedule below :

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 275 OF 1995

Dated the 29th October 2004

Shri P. K. Sahoo, O.S.J.S. (Jr. Br.)
Presiding Officer, Labour Court
Bhubaneswar.

The Management of Horticulturist Bhubaneswar. . . First Party—Management

Its Workman .. Second Party—Workman
Shri Narendra Kumar Nayak.

Appearances :

For the First Party–Management . . . Smt. S. Swastika

For the Second Party–Workman (himself) . . . Shri N. K. Nayak

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo No. 11291(5)-L. E., dated the 25th August 1995 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :—

“Whether the refusal of employment to Shri Narendra Kumar Nayak, Casual Labourer with effect from the 26th October 1985 by the management of Horticulturist, Bhubaneswar is legal and/or justified ? If not, what relief the workman is entitled to ?”

3. The brief facts giving rise to the present case are that workman Shri Narendra Kumar Nayak was engaged verbally by the management of Horticulturist, Bhubaneswar (in short the management) in different plantation programme and agriculture unit on N. M. R. basis with effect from the 1st July 1984 till the 28th February 1990. According to the workman he had completed 240 days as a regular employee in the last preceding 12 months period. Although he had rendered continuous uninterrupted service for more than five years with much sincerity, devotion and to the utmost satisfaction of the management, but the management without any rhyme or reason had illegally refused employment with effect from the 26th October 1995 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). After such refusal of employment the management allowed some junior employees to work in the establishment. Despite his approach the management turned a deaf ear which compelled him to approach the labour machinery by raising a dispute but to no avail. Being aggrieved by the above action of the management, the workman knocked the door of this Court praying for his reinstatement in service with full back wages and other service benefits. Hence, the reference.

4. The management on the other hand, entered its appearance and filed written statement denying the averments as averred by the workman in his statement of claim . While admitting the engagement of the workman with effect from the 16th June 1994 to the 26th October 1995, the management has categorically averred that the workman was engaged as a Casual Labourer on temporary basis in canal embankment coconut plantation under E. R. R. P. Scheme which was a beneficiary oriented temporary scheme. The aforesaid scheme was intended to be handed over to E. R. R. P. beneficiaries being identified by the Block Development Officer of concerned Block after maintenance for next three years after the first

year plantation. There was no integrated approach for the said scheme and the management has no subsequent control on the production or disposal of the said plantation. Therefore, it was beyond the capacity of the management to give employment to the workman beyond the scheme period. According to the management, after completion of the scheme period, the above plantation work was automatically ceased, in its written statement that after closure of the said scheme there was cessation of work and the workman was neither employed as N. M. R. worker nor he was a regular employee of the establishment. He was simply employed as a Casual Labourer on temporary basis for a specific period and was paid all his wages for the days he had actually worked as per the Minimum Wages Act. On the above backgrounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether the refusal of employment to Shri Narendra Kumar Nayak, Casual Labourer with effect from the 26th October 1985 by the management of Horticulturist, Bhubaneswar is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?

6. The workman in support of his case has examined himself as W. W. 1 but has not relied upon any document. On the other hand, the management has examined one Bijaya Kumar Behera, the then Junior Horticulture Officer as M. W. 1 and has relied upon the zerox copies of the documents such as, Award, dated the 12th November 1998 of this Court passed in Industrial Disputes Case No. 192/1994, statement showing the management and payment of wages to the workman, letter of the Director of Projects, dated the 15th April 1983, letter of the Secretary to Government, dated the 20th May 1981 and letter, dated the 21st January 1995 of the Joint Secretary to Government with regard to the representation of Shri Hazari Das, Casual Labourer, State Botanical Garden, Barang marked as Exts. A & B, respectively in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii) :—*For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The perusal of the evidence of the workman clearly emerges that he was working under the management as N. M. R. with effect from the 1st July 1984 to the 28th February 1990. Although he had worked under the management continuously for more the prescribed period, but the management without giving any prior notice or notice pay and retrenchment

compensation retrenched him from service for which he had raised a dispute before the Labour Officer but to no avail. The conciliation proceeding initiated by the Labour Officer ended in failure and the dispute was ultimately referred to this Court for adjudication. Under the above circumstances he has now prayed for his reinstatement in service with back wages. He admits during his cross-examination that no appointment order was issued to him to work in the establishment and he was receiving his wages after signing on the muster roll. It has been suggested to him that he had worked with effect from the 16th June 1984 till the 26th October 1985 and that he had voluntarily discontinued to work with effect from the 27th October 1985 and that the work was completed due to non-availability of fund and that he is not entitled to any relief as prayed for to which he has negatively replied. On the other hand, M. W. 1, Bijaya Kumar Behera in his evidence has categorically stated that the workman was engaged as a Casual Labourer in canal embankment coconut plantation scheme during the 16th June 1984 to the 26th October 1985 but he was never engaged from the 1st June 1984 to the 28th February 1990 as claimed by him. He had also received all his wages for the period from the 16th June 1984 to the 26th October 1985. It is also in his evidence that the scheme was temporary in nature under N. E. R. P. financed by the D. R. D. A. for a period of four years. Since the project was a time bound scheme, the workman is not entitled to get any relief. During evidence he has duly proved the Award passed in Industrial Disputes Case No. 192/1994, statement showing the engagement as well as the payment of wages to the workman, letter, dated the 15th April 1983 of the Director of Projects, letter, dated the 20th May 1981 of the Secretary to Government, letter, dated the 21st January 1995 of the Joint Secretary to Government marked as Exts. A & B, respectively. He has categorically stated during cross-examination that after completion of the scheme no other scheme was operated and the management had got no other scope to engage the workman. It has been suggested to him by the workman that after such refusal of employment the management had engaged other employee ignoring the case of the workman and that some dues are still outstanding and that other employees, namely, Japani Jena and Benu Mallick were engaged by the management to which he has given negative replies.

8. Both the management and the workman have led evidence in the present case in support of their respective cases. The definite case of the workman is that he had rendered continuous service with effect from the 1st July 1984 to the 28th February 1990 in terms of the statutory provisions but the management without any prior notice or notice pay and retrenchment compensation had illegally retrenched him from service. In this context the workman admits in his evidence that no appointment letter was issued to him by the management. It is also clearly evident from his evidence that although he has claimed that he had worked under the management continuously for more than the prescribed period but on careful consideration of the evidence it is seen that he has miserably failed to substantiate the above aspect with regard to his service having been rendered by him in the establishment

with effect from the 1st July 1984 to the 28th February 1990. There is also no cogent material before me to come to a conclusion that the workman had in fact worked from the 1st July 1984 to the 28th February 1990. No proof of receipt of salary or wages for the above period or order of record of appointment or engagement for the aforesaid period has been produced by the workman so as to arrive at a conclusion that he had worked for the above said period as a regular employee. It is for the workman to prove that he had in fact worked from the 1st July 1984 to the 28th February 1990 but the workman has miserably failed to prove and establish that he had in fact worked for the above said period. The oral evidence of the workman in this respect cannot be regarded as sufficient evidence so as to come to the conclusion that he had worked for the aforesaid period under the management. In absence of any cogent material on record it cannot be definitely said that he had worked under the management with effect from the 1st July 1984 to the 28th February 1990. On the other hand, the management has successfully proved and established that the workman had worked under the management from the 16th June 1984 to the 26th October 1985 and he was never engaged from the 1st July 1984 to the 28th February 1990. The perusal of the document Ext. B clearly indicates the engagement of the workman under the management and the receipt of the wages for the period he had worked. Similarly, the letter, dated the 15th April 1983 of the Director of Projects vide Ext. C clearly shows that the project was a time bound scheme and after closure of the scheme the engagement of the workman was ceased as the temporary necessity disappeared. Admittedly the scheme was implemented with a limited grant released under E. R. R. P. programme. In this respect, the evidence already led by the management clearly goes to show that the project was temporary in nature under E. R. R. P. Scheme financed by D. R. D. A. for a period of four years and after closure of the scheme the management had got no other scope to engage the workman. It is therefore abundantly clear that the above Plantation work was a time bound scheme and on the eventuality of the closure of the scheme and non-availability of fund, the services of the Casual Labourers including the workman were terminated due to automatic cessation of work. Since the workman was engaged under a particular time bound scheme with limited funds and when the said project was closed on completion of the scheme, I am of the considered view that the workman is not entitled to get any relief in the present case. Therefore, the claim of the workman for his reinstatement due to non-compliance of provisions of Section 25-F of the Act, in my view, is not tenable in the eye of law. In that view of the matter, there is no scope of application of Section 25-F of the Act in such cases of termination. The Hon'ble Apex Court in a decision reported in 1996 (72) FLR 804 (Supreme Court) in the matter between State of Himachal Pradesh and Suraj Kumar Verma and another has consistently taken the view that "the project in which the respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de-hors the rules".

9. After carefully examining the evidence available on record already tendered by the parties, the documents already relied upon by the management and keeping in view the settled position of law, I am of the view that the workman is not entitled to any relief as prayed for. Both the above issues are answered accordingly.

10. Hence it is ordered :

That the refusal of employment to Shri Narendra Kumar Nayak, Casual Labourer with effect from the 26th October 1985 by the management of Horticulturist, Bhubaneswar is legal and justified ? In that view of the matter, the workman Shri Nayak is not entitled to any relief as prayed for.

The reference is thus answered accordingly .

Dictated and corrected by me.

P. K. SAHOO
29-10-2004
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
29-10-2004
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
D. MISHRA
Under-Secretary to Government